

HEARING BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
SITING COMMITTEE

Stakeholder Hearings on)
Energy Facility)
Permitting Changes) Docket No. 99-SIT-6
to the Siting Process)

HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 14, 1999

9:00 a.m.

Reported By:

Debi Baker

Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

David A. Rohy, Vice Chairman, Second Member

STAFF PRESENT

Bob Therkelsen

Terrence O'Brien

Jonathan Bles

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Comments	1
Suggested Revisions to the Warren-Alquist Act	
Public Comments	
10. Steamfield Analysis for Geothermal Projects	2
Karen Edson, IEP	2
11. Multiple Site Analysis	2
Karen Edson, IEP	6
Jeff Harris, CalPine	12
12. Delegation of Geothermal Siting Authority	17
Karen Edson, IEP	20
Jeff Harris, CalPine	21
11. Multiple Site Analysis	22
Suggested Revisions to the Siting Regulations	26
Public Comments	
1. Electronic Filing	26
2. Deadline for Filing to Intervene	27
3. Appeals of Committee Orders	27
Karen Edson, IEP	28
4. New Definitions	28
Karen Edson, IEP	29
Jeff Harris, CalPine	29

I N D E X

	Page
Suggested Revisions to the Siting Regulations (continued)	
Public Comments	
5. Noticing Provisions	29
6. Distribution of the AFC	30
7. Obtaining Information	32
8. Definition of Utility	33
Karen Edson, IEP	35
Manuel Alvarez, SoCalEdison	37
Karen Edson, IEP	39
9. Demand Conformance	40
Karen Edson, IEP	40
10. Demonstration Projects	40
Karen Edson, IEP	42
11. Air District Determination of Compliance	43
12. Multiple Facility Site	44
13. Filing Fees	44
Karen Edson, IEP	45
Manuel Alvarez, SoCalEdison	51
14. Alternative Certification Processes	52
15. Delegation of Geothermal Plant Siting Authority	52
16. Site Control	53
Karen Edson, IEP	53
Jeff Harris, CalPine	55

I N D E X

	Page
Suggested Revisions to the Siting Regulations (continued)	
Public Comments	
17. Facility Closure	57
Karen Edson, IEP	57
18. Functional Equivalency	58
19. Data Adequacy Regulations	58
Karen Edson, IEP	60
Jeff Harris, CalPine	65
Additional Items	68
Closing Comments	69
Adjournment	70
Certificate of Reporter	71

1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, welcome to the continued meeting of the
4 Siting and Environmental Committee. The purpose
5 of today's meeting is to continue our discussion
6 on proposed modifications to the both the Warren
7 Alquist Act and Siting Regulations.

8 This hearing is being -- well, do we say
9 broadcast? No, it is being Webcast, and on the
10 Web, at Energy.Ca.Gov/RealAudio, for your
11 listening pleasure.

12 The purpose of today's meeting, as
13 previously stated, is to review our proposed
14 changes to both Warren Alquist and the Siting
15 Regs. When we left yesterday, we were back on
16 Warren Alquist changes. I believe we left off on
17 Item Ten.

18 So Mr. O'Brien, if you can introduce
19 Item Ten, we will seek public input.

20 Let me note for the record that
21 Commissioner Vice Chairman Rohy is present. Dr.
22 Rohy, did you have any opening comments this
23 morning?

24 COMMISSIONER ROHY: I'm ready to start.

25 PRESIDING MEMBER LAURIE: Thank you.

1 Mr. O'Brien.

2 MR. O'BRIEN: Thank you, Commissioner.

3 Item Number Ten regards Steamfield
4 Analysis for Geothermal Projects.

5 Staff is recommending that we eliminate
6 the requirement to perform a steamfield analysis.
7 We believe that such analyses in the past have
8 proved non-reliable, and in addition, there are no
9 longer captive ratepayers to protect; we're seeing
10 just merchant plants. And we believe the decision
11 whether to build a project with a speculative fuel
12 source is best left to the developer to decide.

13 So we recommend deleting this
14 requirement.

15 PRESIDING MEMBER LAURIE: Thank you.

16 Anybody in the audience wish to comment
17 on Item Ten? Ms. Edson.

18 MS. EDSON: Karen Edson, representing
19 IEP.

20 IEP supports this recommendation.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Any additional public comment?

23 No additional public comment.

24 Thank you. Item 11, Mr. O'Brien.

25 MR. O'BRIEN: Item 11 concerns multiple

1 site analysis. Applicants may currently file an
2 AFC that contains more than one proposed site or
3 project location. Staff recommends amending the
4 Warren Alquist Act to prohibit this practice.

5 Examining multiple sites requires more
6 staff resources, complicates and makes public
7 participation more difficult, and we believe it
8 creates greater uncertainty regarding the project
9 definition.

10 For all of these reasons, we recommend
11 that applicants be precluded from filing an AFC
12 with more than one site.

13 PRESIDING MEMBER LAURIE: Terry, why do
14 you think, even if the idea is supportable, why
15 should this be a Warren Alquist approach, as
16 opposed to a regulatory approach?

17 MR. O'BRIEN: I think that -- and I'd
18 have to look up in the Warren Alquist Act, that
19 there is a reference to multiple sites. And
20 because of that, I believe we need to change the
21 Warren Alquist Act, as opposed to just making a
22 change to the regulation.

23 PRESIDING MEMBER LAURIE: So it's your
24 understanding that Warren Alquist permits an AFC
25 to contain more than one site, and that's what has

1 to be modified. Is that your understanding?

2 MR. O'BRIEN: Yes. I'd have to take a
3 second to -- yes, if you look at the Warren
4 Alquist Act, Section 25540.4.

5 PRESIDING MEMBER LAURIE: Okay. So we'd
6 be seeking to revise that section.

7 MR. O'BRIEN: Yes, that's correct.

8 PRESIDING MEMBER LAURIE: Thank you.
9 Commissioner Rohy.

10 COMMISSIONER ROHY: Mr. O'Brien, I'd
11 like to ask a question about this item with regard
12 to the -- the site alternatives. Would it not
13 send a message to the public that alternatives
14 were not important, that, in fact, there is only
15 one site. How do you handle that issue if you, in
16 fact, change the statute to say we will only
17 process one site?

18 MR. O'BRIEN: Well, what we're trying to
19 do is preclude the applicant from filing for more
20 than one site. But we would not -- that would not
21 in any way have an impact on the alternatives
22 analysis that would be conducted by staff. In
23 other words, we would look at as many alternative
24 sites as we believe were necessary to perform a
25 thorough analysis and provide the decision makers,

1 i.e., the Commission, with enough information on
2 alternatives to make a reasoned decision on the
3 case.

4 COMMISSIONER ROHY: But you'd not ask
5 the applicant to propose alternatives; is that
6 correct?

7 MR. O'BRIEN: No, that's -- that's not
8 correct. Basically, what we would preclude them
9 from doing is coming forward and say we have two
10 sites, for example, and we want the Commission to
11 approve both of these sites, and we want you to do
12 the same level of analysis on both of them.

13 This is a situation that we ran into in
14 the San Francisco Cogeneration Project, and the
15 staff started out by examining the two sites that
16 the applicant put forward. It was not until quite
17 late in the process that the applicant finally
18 dropped one of the sites. So that's what we're
19 trying to prohibit. That in no way would have an
20 impact on our alternative site analysis.

21 For example, in San Francisco, I think
22 we looked at over two dozen different alternative
23 sites, and even if they'd only proposed one site,
24 the alternatives would still look at that,
25 would've still looked at that -- that same number.

1 COMMISSIONER ROHY: Thank you for that
2 important distinction.

3 MS. EDSON: Well, I have some questions,
4 as much as anything. In the case of San
5 Francisco, did they actually file under that
6 section of the statute? Did they put it forward
7 as a -- I mean, the statute I think refers to
8 multiple facility site. And in my mind, I thought
9 that the greatest application, although it's never
10 been done, would be in, say, a geothermal resource
11 area where you may want to come forward with
12 different generation locations within the same
13 resource area, have them reviewed at the same time
14 and build -- if you got your permits, then build
15 out as the resource proved up.

16 But I'm not aware that anyone's come
17 forward actually with a multiple facility. I've
18 always viewed this as multiple power plants, as
19 opposed to multiple sites.

20 MR. O'BRIEN: Right. There are two
21 different aspects here. One is filing for your
22 project with several sites, okay. And then
23 there's another in which you'd put more than one
24 project on one site, multiple facilities. Okay.

25 What we're talking about here is an

1 applicant filing an application that contained two
2 or more sites. The same project, but located on a
3 different site.

4 MS. EDSON: You're -- you're talking
5 about just one aspect of the section.

6 MR. O'BRIEN: Yes, that's correct.

7 MS. EDSON: Well, I think, from IEP's
8 point of view, we need to think about this more
9 and see how this market develops before we start
10 eliminating options. I don't -- it's not that I
11 expect there to be, you know, this groundswell of
12 interest in applying under this section of the
13 statute, but the statute I think gives the
14 Commission considerable discretion to define what
15 -- what's acceptable and what's not. And I think
16 we would rather not see a change in the statute at
17 this time.

18 PRESIDING MEMBER LAURIE: Thank you.

19 Mr. O'Brien, would the section as
20 written work if you had an NOI to do that
21 analysis? To do the -- an alternative site
22 analysis, and could it be that that's why the
23 provision was in Warren Alquist, with the
24 expectation that an NOI analysis would do that
25 multiple site examination and reach a conclusion

1 as to which one was environmentally superior?

2 MR. O'BRIEN: Well, the -- the NOI was
3 set up to have applicants submit at least three
4 sites, and you'd perform a -- an analysis which
5 would include kind of a fatal flaw look at all the
6 different sites to see if some of them should --
7 should drop out.

8 In addition, the NOI has a provision and
9 contemplates that you might come forward and get a
10 project approved and then at a later time come
11 back and add generating capacity at that site.

12 This recommendation from staff is in, I
13 think, direct response to the problems that we ran
14 into on the San Francisco project, where on the
15 AFC, going directly to the AFC, the applicant said
16 we want the Commission to consider two different
17 sites, same project, but at two different sites
18 commissioned. We don't know what site we're going
19 to go with, but we want you to look at two of
20 them.

21 That placed quite a burden on staff.
22 You basically have two different AFCs, and the
23 question comes up well, what's the project? What
24 is it that you're proposing? And if you can
25 propose two sites, could an applicant come in and

1 say hey, we want you to look at four sites in this
2 AFC.

3 The other thing that gives staff great
4 concern is the problems that it gave the members
5 of the community, which was, okay, where's this
6 project going to go? I mean -- and you expend all
7 those resources, and then six, seven months into
8 the proceeding the applicant goes well, you know,
9 we finally decided, we want to go with Site A as
10 opposed to Site B.

11 And the reason in the San Francisco
12 case, I believe that they -- they dropped one of
13 the sites, is that the staff conclusion and
14 recommendation was that one site not be approved,
15 that there were significant environmental impacts.
16 We don't know what would've happened if, in fact,
17 that wouldn't have been the case. Would they have
18 gone all the way to the end of the proceeding and
19 said, Commission, we'd like you to certify two
20 sites for us.

21 So we think it's -- it creates an awful
22 lot of problems, and that applicants should know
23 when they file an AFC where they want to put their
24 project.

25 MR. THERKELSEN: Bob Therkelsen

1 speaking.

2 Commissioners, you were alluding to the
3 NOI does provide -- if we retain the NOI -- does
4 provide an option for an applicant to submit
5 multiple sites, even with the same facility on
6 them, and for those to be considered at a lower
7 level of detail than the AFC. It also allows, as
8 Mr. Williams was talking about yesterday, a
9 banking option, where the applicant actually get a
10 preliminary statement from the Commission on the
11 suitability of those sites for future use.

12 PRESIDING MEMBER LAURIE: Thank you.

13 MS. EDSON: I just wanted to add that I
14 -- I actually agree with Mr. O'Brien's concern
15 about that situation, and I think an applicant is
16 -- should come forward with a -- with a defined
17 project. But my -- my point is simply that it's
18 within the Commission's discretion to require that
19 of an application under the AFC statutes and under
20 the multiple -- the facility site sections, as
21 well.

22 PRESIDING MEMBER LAURIE: Well, I guess
23 that's the concern, I think, as staff reads Warren
24 Alquist, it's apparent that Warren Alquist says
25 you can file for multiple sites.

1 MS. EDSON: Multiple facility sites.

2 MR. THERKELSEN: Commissioner, I do
3 agree there is some confusion there. In fact, the
4 section that I gave to Terry with the -- with the
5 number of -- I was quickly looking it up, and it
6 does refer to multiple facility sites, which is --
7 which is a different concept than multiple sites.
8 And we're not proposing to get rid of the option
9 of multiple facilities at one site.

10 So there is some -- some confusion
11 there. And right off, just a quick skim through
12 the act, I couldn't identify exactly which section
13 deals with multiple sites, so sorry for that lack
14 of clarity.

15 COMMISSIONER ROHY: Okay. But you're
16 retaining -- in fact, we'd like to know if they
17 want multiple facilities at the same site, because
18 that would be a cumulative effect if they built
19 out Unit A, B, and then C.

20 MR. THERKELSEN: Oh, yes. Very clearly
21 we would want to know that. And some applicants,
22 frankly, are considering phasing projects. And I
23 think that's something that's valid for the
24 Commission to look at. It represents a new
25 wrinkle in our siting process. But that's not

1 something we're proposing to eliminate.

2 PRESIDING MEMBER LAURIE: Thank you.

3 MR. HARRIS: Hi. I'm Jeff Harris. Good
4 morning, Commissioners.

5 Just a couple of quick comments. I
6 heard, as I was walking in the hall, some
7 discussion about the difference between multiple
8 facility sites and the alternatives analysis. I
9 think that's a real important distinction to keep
10 in mind here. I agree with Karen in terms of
11 especially geothermal issues.

12 I also want to just point out that --
13 that there is potential for confusion in examining
14 multiple sites. And there's attention here,
15 there's attention because the staff has an
16 obligation under CEQA to take a look at a
17 reasonable range of feasible alternatives. And
18 that has to be tempered against the potential
19 harms that are laid out in the recommendation
20 section. And from the applicant's -- from an
21 applicant's point of view, we just want to point
22 that out, and that the reasonable range is
23 something that we'd want to continue to talk to
24 staff about so that we can both satisfy the CEQA
25 obligations, because the last thing an applicants

1 wants is a CEQA lawsuit, and prevent the kind of
2 confusion that potentially arises from mixing
3 those two concepts.

4 Thanks.

5 PRESIDING MEMBER LAURIE: Thank you.

6 Additional public input on the question.

7 MR. THERKELSEN: I had a question for
8 Jeff, before he leaves.

9 PRESIDING MEMBER LAURIE: Mr. Harris.

10 MR. THERKELSEN: The concept of
11 retaining the NOI to allow developers to get some
12 kind of an early review by the Commission on
13 several sites is something that, you know,
14 currently exists in the Warren Alquist Act,
15 although in my opinion the NOI is a very
16 burdensome process the way it's currently
17 structured. But it was a concept, again, that was
18 thrown out by Mr. Williams yesterday.

19 In working with applicants, what's your
20 sense about a value for a process like that?

21 MR. HARRIS: For an NOI process in
22 addition to an AFC process?

23 MR. THERKELSEN: An NOI process, not
24 necessarily like it is today, not with the detail
25 and the scrutiny, but that would allow an

1 applicant to get some kind of a preliminary feel
2 on the suitability of a site, or the likelihood of
3 a site being permitted prior to filing AFCs on --
4 on a site, or sites.

5 MR. HARRIS: I think, Bob, as a general
6 rule, and this is not a surprise, that more
7 process and more time that's going to be
8 considering an issue, a problem for applicants.
9 But also, keep in mind that when the application
10 arrives at the Commission and starts the one year
11 clock, there's been a lot of work done on our side
12 pre-AFC filing, months in most cases. In addition
13 to going out and figuring out if there's land of
14 suitable size and configuration available, finding
15 out whether it is actually available for purchase,
16 if somebody has an ability to acquire those
17 properties. And most times, the developers are
18 going to go out and at least get an option on
19 property.

20 So, but that doesn't mean there aren't
21 other properties out there that they also have
22 optioned. A lot of times that's a possibility, as
23 well. A developer will option several possible
24 sites because their analysis is incomplete.

25 I think that the existing CEQA process,

1 that asks the Commission to look at that
2 reasonable range of alternatives, is probably
3 sufficient from an applicant's point of view at
4 this point.

5 MR. THERKELSEN: Let me probe a little
6 bit more, though. What happens if that NOI
7 concept was not a requirement, but an option,
8 where a developer may, you know, have a group of
9 sites and would want the Commission to give some
10 kind of preliminary review. Would that be of any
11 value in this -- to your developers?

12 MR. HARRIS: I think it is of value, and
13 I also think it does exist. There is -- there are
14 provisions for pre-filing review. Applicants will
15 often meet with the Commission before filing to
16 talk about sites, and see -- granted, that's
17 probably not used as much as the staff would like
18 it to be used. I'll concede that, for sure. But
19 that, again, usually ties back to the -- to the
20 importance of getting a project built on time.
21 And as we all know, the Commissioners are probably
22 tired of hearing summer peak, summer peak, summer
23 peak, drives the schedule probably more than
24 anything else from the development standpoint.

25 MR. THERKELSEN: Okay. Thank you.

1 PRESIDING MEMBER LAURIE: Additional
2 public input on the question?

3 MR. O'BRIEN: Commissioner, I have some
4 clarification on the -- on this issue.

5 It's regarding multiple facility site.
6 The NOI allows the Commission to approve an NOI
7 for an initial amount of generating capacity, and
8 an expanded ultimate capacity. What we're saying
9 is that if you eliminate the NOI, on the AFC an
10 applicant then would be required to file for one
11 site with a set generating capacity. If the
12 Commission approved that AFC, and then the
13 applicant at some subsequent time wanted to expand
14 the generating capacity at that site, if that
15 expansion of generating capacity was 50 megawatts
16 or less they would file an amendment with the
17 Commission, I believe. If it was more than that,
18 I think that what would be required would be to
19 file a new AFC.

20 So basically, what we've put on the
21 table are changes to the Warren Alquist Act, and
22 the regs, which would say to applicants, if you're
23 going to file you need to just identify one site,
24 and that's what the Commission is going to
25 examine.

1 PRESIDING MEMBER LAURIE: Okay. Thank
2 you.

3 All right, we'll move to the next item.

4 MR. O'BRIEN: The next item concerns
5 delegation of geothermal siting authority to
6 county governments.

7 The Warren Alquist Act currently allows
8 the Commission to delegate this siting authority
9 to counties. Staff is recommending that this
10 section be deleted.

11 We believe that it is inconsistent with
12 the advantages associated with a one-stop siting
13 process, including consistency and efficiency, and
14 the need to create a level playing field for all
15 project applicants.

16 In addition, we believe that geothermal
17 facilities, given our experience, and their
18 appurtenant facilities, often have impacts located
19 outside the county in which they are located.

20 So for those reasons, we are making that
21 recommendation. I think it's consistent with some
22 of the other recommendations we've made regarding
23 siting jurisdiction.

24 PRESIDING MEMBER LAURIE: In your
25 matrix, in the middle box where you talk about

1 Imperial County expressing interest, but then it
2 withdrew after it was supplied with data from the
3 Commission listing the information that we were --
4 we were demanding. Did we --

5 MR. O'BRIEN: Yeah. That --

6 PRESIDING MEMBER LAURIE: -- did we just
7 make that information up, or is it statutory?

8 MR. O'BRIEN: There -- there is a
9 section in the regulations that pertain to
10 information. What we had in the early 1990's was
11 Imperial County expressed an interest in perhaps
12 getting jurisdiction, and we provided them with
13 information and asked for some information back
14 from them. And upon review of that, they decided
15 not to go forward.

16 So they never formally submitted a
17 request. We had some conversations with them, and
18 then, for whatever reason, they decided not to
19 pursue it.

20 PRESIDING MEMBER LAURIE: Well, that's a
21 little different than what I'm reading, Terry.
22 What I read is we, pursuant to regulation, not
23 statute but regulation. And if you can find that,
24 it would be helpful to me.

25 MR. THERKELSEN: Commissioner, Bob

1 Therkelsen speaking. The section in the
2 regulation that deals with delegation of
3 geothermal power plant siting authority to local
4 governments is Section 1860 to 1870. There's a
5 whole series of process and procedural
6 requirements there that lays -- lays out what
7 local agencies have to do to obtain that
8 delegation. That was something the Commission
9 developed --

10 PRESIDING MEMBER LAURIE: Okay. But we
11 --

12 MR. THERKELSEN: -- several years ago.

13 PRESIDING MEMBER LAURIE: We can change
14 that.

15 MR. THERKELSEN: Right.

16 PRESIDING MEMBER LAURIE: We can make it
17 a lot easier for -- it's disingenuous to say that
18 counties looked at our process and said oh, well,
19 never mind. It's unfair to conclude, therefore,
20 that there's no interest to do that, as opposed to
21 looking at it from the perspective of maybe our
22 regulations are simply too burdensome. So on the
23 one hand, the statute gives county the power; on
24 the other hand, we take it away through burdensome
25 regulation.

1 I am not telling you that I think the
2 regulation is burdensome, but it could be. So I
3 am not prepared to say that simply because
4 counties have never proceeded with it doesn't
5 conclusively tell me that they wouldn't be
6 interested in doing so if we made it easier for
7 them.

8 MR. THERKELSEN: No, I -- yes, I
9 understand what you're saying. I think also, I
10 think generally the position of staff is this
11 really isn't a necessary provision. Now, in order
12 to have a level playing field for all
13 participants, our recommendation would be to have
14 it all done here.

15 PRESIDING MEMBER LAURIE: Ms. Edson.

16 MS. EDSON: Commissioner, Karen Edson,
17 for IEP.

18 As you know, IEP represents a cross
19 section of industry, including virtually all of
20 the generation technologies. And it's not obvious
21 to us why this option should be eliminated. We
22 agree with your comments, Commissioner Laurie,
23 that the regulations, which I'm quite familiar
24 with, actually, were based on a committee decision
25 forthcoming from a petition by Mono County for

1 delegating siting authority in the early eighties.

2 But the Commission clearly has the
3 discretion to structure that delegation in ways
4 that may or may not make it an option that
5 counties are interested in, and may be a mechanism
6 to encourage geothermal resource development. And
7 we don't to -- we would rather not see that option
8 eliminated.

9 PRESIDING MEMBER LAURIE: Thank you.

10 Additional public input. Mr. Harris.

11 MR. HARRIS: Jeff Harris.

12 Just real briefly. I want to associate
13 ourselves, CalPine, with the remarks just made by
14 IEP. Although it's not common knowledge to a lot
15 of folks, CalPine has a significant geothermal
16 resource portfolio, and is very interested in this
17 issue for that reason.

18 So, thank you.

19 PRESIDING MEMBER LAURIE: Anybody else
20 desire to comment on Item 12?

21 Mr. O'Brien, anything further on Warren
22 Alquist?

23 MR. O'BRIEN: The staff has nothing
24 further, Commissioner.

25 PRESIDING MEMBER LAURIE: Commissioner

1 Rohy.

2 COMMISSIONER ROHY: The only comment I'd
3 like to make is I know at one point staff was
4 concerned with applicants coming in with multiple
5 arrangements for the power plant at a site. I'm
6 going back to the item that we covered a few
7 moments ago on multiple sites. But where an
8 applicant might come in and say well, it could be
9 simple cycle, combined cycle, it might be 250
10 megawatts, might be 1,000 megawatts. And then
11 your comment, Mr. O'Brien, that said at one point
12 they could be licensed for a certain size, with
13 the ability to increase at a later point with
14 regard to an NOI.

15 So my comments, I'm seeking
16 clarification on what staff's position are with
17 regard to the configurations at a site, and
18 whether it could be built out in the future. Do
19 you have recommendations for that?

20 MR. O'BRIEN: The staff has had
21 discussions on the issue of applicants coming in
22 and saying it might be 770 megawatts, or 780, and
23 there might be some difference in terms of the
24 exact location of the project on the site, et
25 cetera. And we decided not to pursue changes in

1 that area, determining that there could be a need
2 for applicants to have some flexibility on that.

3 COMMISSIONER ROHY: I'm looking at more
4 major changes. For instance, an applicant might
5 say we're going to put in 500 megawatts, but
6 perhaps, to your point a moment ago, we'd like the
7 -- permission that within two years after
8 completion of the 500 we'll add another 250. And
9 you -- you stated a few moments ago that would be
10 a separate AFC.

11 MR. O'BRIEN: Yes, that's -- that's my
12 belief.

13 COMMISSIONER ROHY: But in the past,
14 under the NOI process, from what I understood you
15 to say, an applicant could get a license from us
16 that would allow that. Is that correct?

17 MR. THERKELSEN: I don't believe that's
18 correct. I believe --

19 COMMISSIONER ROHY: I may have --

20 MR. THERKELSEN: Right. In the NOI they
21 could propose multiple sites, and they could
22 propose, you know, the potential for future
23 additions. Even in our AFC there have been a
24 number of instances where applicants have said
25 well, in the future we want to do this, but

1 because it's not nailed down, because it's not a
2 clearly defined project under CEQA, you know,
3 we've said fine. Bring it back to us at some
4 future date when you have more specificity.

5 Our preference is to have a project on a
6 site. And I think that's consistent not only with
7 the desire of the Warren Alquist Act, but also
8 with the desire of CEQA in terms of how they
9 define a project.

10 COMMISSIONER ROHY: There's one last
11 configuration change that I'd like to ask about,
12 and I don't think people will do this because of
13 technical reasons. But should someone wish to put
14 in a simple cycle with a future conversion to
15 combined cycle, how would you treat that?

16 MR. THERKELSEN: In case -- we've had
17 that instance also, in the past, and people will
18 come in with the project as defined, with an
19 understanding that at some future time they may
20 file an amendment or an additional application to
21 expand that site to add on another cycle. Another
22 unit, another whatever else.

23 But again, the project that they know
24 about at that moment, and that is clearly defined,
25 is what we analyze and what we do -- do our

1 decision on.

2 COMMISSIONER ROHY: So if somebody did
3 come with a 200 megawatt simple cycle and then
4 later increased it to 300 megawatts because of
5 adding the steam turbine and boiler, that would be
6 a separate project.

7 MR. THERKELSEN: That's correct. We
8 would consider, you know, it generally is
9 speculative at the time of the initial filing. If
10 they have enough detail that they're proposing at
11 that time and want the decision on that time, then
12 yes, we would look at that as being the complete
13 project. But otherwise, it would be something
14 that we'd look at in the future.

15 COMMISSIONER ROHY: So they could
16 propose it as a complete project with a build-out
17 as simple cycle first, and a subsequent build-out
18 to combined cycle?

19 MR. THERKELSEN: They could propose
20 that. And again, it depends upon what level of
21 detail they have, whether or not the Commission
22 would certify that as the project, applying
23 conditions on it, mitigation measures, et cetera.

24 My experience has been usually they
25 don't have all that definition. It's still an

1 iffy project in their mind. In which case, we say
2 fine, bring it back to us in compliance as an
3 amendment, if that's appropriate, or as a new
4 filing.

5 COMMISSIONER ROHY: Because emission
6 control is often done within the boiler. As I
7 say, I think this is more academic, but I wanted
8 to test your procedures on this. Thank you.

9 MR. THERKELSEN: Right.

10 PRESIDING MEMBER LAURIE: Okay. I'd
11 like to turn to the regulations. I'd like to
12 start with number one. I understand that
13 yesterday we went through a number of these items.
14 There's no need to repeat that testimony, but I'd
15 like to call it out so that we can proceed in
16 order and not forget anything.

17 So, Terry, why don't you start with
18 number one.

19 MR. O'BRIEN: Commissioner, number one
20 is on electronic filing. And the issue is should
21 the opportunity and ability of parties to file
22 material electronically be expanded. I thought
23 that yesterday the parties that were here
24 addressed that issue.

25 PRESIDING MEMBER LAURIE: Any additional

1 public input? Any additional public input.

2 Thank you.

3 Seeing none, I'd like to move to number
4 two.

5 MR. O'BRIEN: Number two is filing to be
6 an intervenor. Should the date by which a party
7 must intervene in a siting case be changed. Also
8 on this item there was conversations and input
9 received yesterday.

10 PRESIDING MEMBER LAURIE: Thank you.
11 There was comment received yesterday. is there
12 any additional public in put on item number two?

13 Seeing none, thank you.

14 Item number three.

15 MR. O'BRIEN: Item number three is
16 appeals of committee orders. Should time limits
17 be imposed for, one, the time within which a party
18 may petition the Siting Committee to issue its
19 ruling in the form of a written order; and, two,
20 the time within which a party may petition the
21 full Commission to review a Siting Committee
22 ruling.

23 And staff recommends that time limits be
24 established in the regulations to impose deadlines
25 for both of these items, so we're not at this

1 point in time proposing specific language. We
2 just believe there should be specified timelines.

3 PRESIDING MEMBER LAURIE: Thank you.

4 Public input on item number three.

5 I don't believe we took much discussion
6 on this yesterday.

7 MR. O'BRIEN: I don't -- I'm not sure we
8 had any discussion on this yesterday.

9 PRESIDING MEMBER LAURIE: Ms. Edson.

10 MS. EDSON: Yesterday, on behalf of IEP,
11 I indicated that clarification of time limits for
12 various actions we thought were appropriate, and
13 probably of value to the process.

14 PRESIDING MEMBER LAURIE: Thank you.

15 Additional public comment? Thank you.

16 Seeing none, I'd like to proceed to
17 number four, please.

18 MR. O'BRIEN: Item number four concerns
19 new definitions for -- of the terms "letter of
20 intent" and "option contract". This pertains to
21 air quality issues. And staff recommends adding
22 definitions for these terms to list of definitions
23 found in Section 1702 of the regulations.

24 At this time we don't have proposed
25 language.

1 PRESIDING MEMBER LAURIE: Thank you.

2 Additional public input on item number
3 four. Ms. Edson.

4 MS. EDSON: I'm Karen Edson, for IEP.

5 The language is what will be important
6 to us here.

7 PRESIDING MEMBER LAURIE: Thank you.

8 Mr. Harris.

9 MR. HARRIS: I'm tempted just to say
10 ditto, but I think it is important because it has
11 air quality analysis impacts, and we'll want to
12 work with the Commission in developing those
13 definitions.

14 PRESIDING MEMBER LAURIE: Thank you,
15 sir.

16 Additional public input on item number
17 four? Thank you. Seeing none, next item, please.

18 MR. O'BRIEN: Item number five refers to
19 noticing. The question is whether changes should
20 be made to the Commission's noticing provision.
21 We had a discussion on this item yesterday, and
22 received input from several parties.

23 PRESIDING MEMBER LAURIE: Thank you.

24 Recognizing there was comment yesterday,
25 is there any party wishing to provide additional

1 thoughts or comments today on item number five?

2 Thank you. Seeing none, next item,
3 please.

4 MR. O'BRIEN: Item number six is
5 distribution of the AFC. Staff's recommending
6 that Section 1714 of the regs be amended to
7 require distributing a copy of the AFC to the
8 California ISO, something we're currently doing
9 now, and requesting the Cal-ISO to perform an
10 analysis regarding system reliability.

11 Staff's also recommending modifying the
12 regulation to establish a specific date in the
13 proceeding after which a project is deemed data
14 adequate, by when an agency is required to submit
15 its final report or comments on the application.

16 On this second part, in terms of
17 providing information by a certain date, that was
18 also discussed yesterday under a couple of the
19 other items.

20 PRESIDING MEMBER LAURIE: Question. I
21 wish I had 1714 in front of me. But how do we,
22 through our own regulation, impose requirements on
23 other agencies?

24 MR. O'BRIEN: Well, we'd -- Mr. Brees
25 can come up here, from the Legal Office --

1 (Laughter.)

2 MR. O'BRIEN: -- and explain how our
3 regulations can require another agency to -- to do
4 so.

5 PRESIDING MEMBER LAURIE: I mean, I
6 understand the principle. The principle is a
7 regulation of any agency is a state regulation.
8 And it has the force and effect of law, and
9 everybody is supposed to comply with it. It's not
10 just our regulation.

11 Would you like to offer any comment on
12 that, Mr. Blees? That is, I'm interested in the
13 net force and effect of a requirement in our
14 regulation imposing a duty on an agency that is
15 not a applicant, for example. Or not a party to
16 the applicant.

17 MR. BLEES: Well, like many others, I'm
18 also tempted to say I'm not a lawyer.

19 PRESIDING MEMBER LAURIE: Can you state
20 your name for the record, please.

21 (Laughter.)

22 PRESIDING MEMBER LAURIE: This is
23 Jonathan Blees.

24 MR. BLEES: Jonathan Blees, from the
25 Commission's Legal Office.

1 This one, or this one?

2 PRESIDING MEMBER LAURIE: Both.

3 MR. BLEES: Both. Okay. Is that okay?

4 Commissioners, I frankly am not sure
5 whether this Commission can order another agency,
6 particularly another state agency, to do
7 something. However, I do believe that this
8 Commission has the authority to define
9 requirements for participating in its -- in its
10 process. The Commission could, for example, say
11 that any comments or testimony not received by a
12 certain date will not be considered by the
13 Commission. That would have the same practical
14 effect as an order, or a regulatory requirement
15 directed to another state or -- state agency, or
16 to a local agency.

17 PRESIDING MEMBER LAURIE: Okay. That's
18 helpful. Thank you.

19 Any public comment on item number six?
20 Public comment on item six?

21 Seeing none, thank you. The next item.

22 MR. O'BRIEN: Item number seven is
23 obtaining information. Should there be a date by
24 which all requests for information in a siting
25 case have to be submitted unless the committee

1 grants an extension. There was a discussion at
2 yesterday's hearing on this. The committee
3 received input from several stakeholders.

4 PRESIDING MEMBER LAURIE: Thank you.

5 Public input on item number seven.

6 Item number seven.

7 Seeing none, thank you. Next item,
8 please.

9 MR. O'BRIEN: The next item is
10 definition of a utility. Should the definition of
11 the word "utility" in Section 1716(g) be amended
12 to conform to wording in Section 25108 of the
13 Warren Alquist Act? Are any other definitional
14 revisions necessary, given the changes that have
15 occurred in the restructured electricity industry?

16 Staff is raising the question what
17 changes, if any, are necessary to ensure the
18 Commission has the authority to obtain all the
19 information needed to reach a decision on an AFC.

20 COMMISSIONER ROHY: Commissioner, may I
21 ask a question?

22 PRESIDING MEMBER LAURIE: Commissioner
23 Rohy.

24 COMMISSIONER ROHY: My recollection is
25 that the Warren Alquist Act defines a utility.

1 But I would think that a utility, a, quote,
2 utility, would be something that the legislature
3 should define for purposes of all agencies such as
4 the CEC, the California Public Utilities
5 Commission, the EOB. Why would this be regulatory
6 rather than statutory?

7 I'm not arguing with the need for a new
8 definition of a utility in the new world. I'm
9 just wondering should it not be statewide.

10 MR. THERKELSEN: Bob Therkelsen
11 speaking. Probably the only reason it should be
12 regulatory rather than legislative is, A, if
13 there's not a definition right now in the
14 legislation, and I would -- you know, I looked
15 right now to see if that's the case. But
16 secondly, we may have a unique need for that term
17 which may be different than somebody else's, and
18 therefore we may want to define it one way in our
19 process.

20 PRESIDING MEMBER LAURIE: A
21 clarification, please. Bob, can you turn to
22 25108. I'm assuming that's in the definition
23 section of Warren Alquist.

24 MR. THERKELSEN: 25108 -- yes, got it.

25 PRESIDING MEMBER LAURIE: And I'm also

1 assuming that that definition section says
2 something like for the purposes of this act, the
3 definitions of the following shall be as so
4 stated. Is that fair?

5 MR. THERKELSEN: That's correct.

6 PRESIDING MEMBER LAURIE: So then how do
7 we adopt a regulation consistent with the act that
8 has a different definition than the act mandates?

9 MR. THERKELSEN: That's a good question.

10 PRESIDING MEMBER LAURIE: My initial
11 reaction would be we should probably --

12 MR. THERKELSEN: The two need to be
13 consistent.

14 PRESIDING MEMBER LAURIE: Yes.

15 MR. THERKELSEN: Staff will do more work
16 on this particular item.

17 PRESIDING MEMBER LAURIE: Ms. Edson.

18 MS. EDSON: First, in response to
19 Commissioner Rohy, AB 1890 did change the
20 definition of public utility in the Public
21 Utilities Code to clarify that restructuring did
22 not make certain -- did not make certain entities
23 a utility, because under that code that defines
24 when you're subject to PUC regulation.

25 I just want to alert the Commission here

1 that the -- I think the real implication of this
2 change is not with regard to power plant siting.
3 I mean, clearly our -- under the Warren Alquist
4 Act, and under the regulation, applicants to build
5 a power plant are utilities under the definition
6 of the act and the regulation. I do think that
7 the change here goes more to the -- the data
8 collection activities of the Commission, where the
9 regulatory definition arguably does not encompass
10 marketers. And a change in the -- in the
11 regulations here could have very significant
12 implications in the area of the Commission's data
13 collection activities in the application of those
14 mandates.

15 So I just wanted to alert you that I
16 think the implication of the regulation is really
17 outside the scope of this power plant siting
18 process, and may create some confusion in the
19 industry about whether they should be paying
20 attention or not.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Mr. Alvarez, if you are about to argue
23 that the definition of utility should read Manuel
24 Alvarez, that is not going to be acceptable.

25 (Laughter.)

1 MR. ALVAREZ: No? Well, I won't argue
2 that.

3 Manuel Alvarez, with Southern California
4 Edison.

5 Yesterday, I did raise the question that
6 the Commission addressed, this question of utility
7 definition. And Commissioner Rohy brought up the
8 issue, it's a broader scope than within the
9 context of the Energy Commission, because then
10 what happens within the context of the Public
11 Utilities Code and the changes that took place in
12 AB 1890, and how the Energy Commission applies
13 that definition, is in fact a different
14 application.

15 So the scope of the application and the
16 region which the Commission believes it has
17 authority for participants in this market because
18 they are defined as a utility, is not consistent
19 across the entire spectrum of the industry as it
20 exists today.

21 So I believe that your scope needs to be
22 expanded, as opposed to within the context of the
23 -- of the Energy Commission.

24 PRESIDING MEMBER LAURIE: Do you need
25 clarification of Mr. Alvarez' position, Mr.

1 O'Brien? Do you understand what --

2 MR. O'BRIEN: Manuel --

3 PRESIDING MEMBER LAURIE: We'd like to
4 have a little further discussion on that.

5 MR. ALVAREZ: I guess it comes up in the
6 context of the information the Commission is
7 requesting. And I guess the example that I use to
8 help me understand that is under PURPA, the
9 qualifying facility's exempt from public utilities
10 regulation, yet when you interface at the Energy
11 Commission the definition of a utility is in fact
12 under -- under regulation, so is there a
13 connection between the application of the Energy
14 Commission's definition of a utility, and the
15 exemption that a QF is granted under public
16 utilities regulation at the federal level. And
17 where does that responsibility intersect.

18 And that's where you run into the
19 difficulties.

20 COMMISSIONER ROHY: Mr. Alvarez, were
21 you suggesting that, as I think I was suggesting,
22 that there be one definition in the state of
23 California what a utility is and is not?

24 MR. ALVAREZ: Yes. And I think that
25 would help at least the regulatory environment in

1 its entirety.

2 MS. EDSON: I can't resist. It's not
3 conceivable to me that you could have a single
4 definition for the Public Utilities Commission and
5 the California Energy Commission.

6 My clients aren't objecting to be under
7 the definition of the California Energy
8 Commission's definition of utility. But if you --
9 anyone proposes to put us under the Public
10 Utilities Code definition of utility, that --
11 that's just a complete -- I mean, the roles of the
12 agencies, the functions of the agencies, the
13 activities of the agencies are entirely different.

14 COMMISSIONER ROHY: Karen, I totally
15 agree with you. I'm not going there. Perhaps we
16 should use a different word in the new world.

17 MS. EDSON: That might well be
18 appropriate.

19 COMMISSIONER ROHY: I just like to see
20 common use of words, and if a utility is that
21 entity which is regulated by the PUC, then that's
22 a very small set of people. And maybe we ought to
23 use a different word, then.

24 MS. EDSON: Well, that might --

25 COMMISSIONER ROHY: Because I agree with

1 what you're saying. But I just don't like to see
2 the same word used in multiple ways within state
3 energy agencies.

4 MS. EDSON: Well, it does create
5 confusion. I agree with that.

6 COMMISSIONER ROHY: And we haven't said
7 too much now.

8 PRESIDING MEMBER LAURIE: Any additional
9 comments?

10 Thank you. Next item, please.

11 MR. O'BRIEN: The next item is number
12 nine. Staff is recommending deleting Section
13 1720.5 on demand conformance to conform the siting
14 regulations with current law. In other words, SB
15 110.

16 PRESIDING MEMBER LAURIE: Thank you.
17 Public input on the question.

18 Ms. Edson.

19 MS. EDSON: IEP supports that change.

20 PRESIDING MEMBER LAURIE: Thank you.
21 Additional public input on the question.
22 Seeing none, thank you. Next item.

23 MR. O'BRIEN: The next item concerns --
24 is number ten, demonstration projects. Staff's
25 recommending deleting Section 1720.6 on

1 demonstration projects.

2 Under the Warren Alquist Act,
3 demonstration projects can avoid filing an NOI and
4 proceed directly to an AFC, notwithstanding their
5 size and technology. Section 1720.6 states that
6 the criteria for determining whether a project is
7 a demonstration project are to be established in
8 the Electricity Report. Staff has recommended
9 that the NOI be eliminated. With the elimination
10 of the NOI all demonstration projects are eligible
11 to file an AFC despite their size and technology,
12 and therefore this would mean you would have no --
13 you would no longer have a need for Section
14 1720.6.

15 PRESIDING MEMBER LAURIE: Thank you.

16 Comment on the question.

17 COMMISSIONER ROHY: I'd like to make a
18 short comment. Please stay there, Ms. Edson.

19 Are you -- what -- if, for instance, the
20 NOI was not eliminated by some reason, would that
21 change your view on this?

22 MR. O'BRIEN: Yes, it would.

23 PRESIDING MEMBER LAURIE: Good point.

24 Thank you.

25 MS. EDSON: Karen Edson, IEP. That is

1 exactly our point, that the administrative changes
2 should follow the legislative changes. The case
3 of the previous item, SB 110 has been enacted. It
4 makes sense to conform the regulations. But in
5 this case, and in several other cases that follow,
6 these are recommendations that are an outgrowth of
7 the staff's legislative recommendations. We would
8 simply suggest doing those kinds of things in
9 sequence.

10 COMMISSIONER ROHY: I would have another
11 reason to eliminate it, though, and that -- it's
12 based on the Electricity Report, and the
13 Electricity Report hasn't been updated since --
14 well, Mr. O'Brien, I believe you were the project
15 manager for that.

16 MR. O'BRIEN: That's correct. I've been
17 trying to purge that from my memory, but yes. And
18 the Commission adopted that, I believe, in
19 December of '97.

20 PRESIDING MEMBER LAURIE: Weren't you
21 the Presiding Member?

22 COMMISSIONER ROHY: Oh, there's
23 something in my memory on that, too.

24 (Laughter.)

25 COMMISSIONER ROHY: But the point being

1 that if we no longer have an Electricity Report,
2 then this section must be altered in some manner
3 anyway.

4 MR. O'BRIEN: That's correct.

5 PRESIDING MEMBER LAURIE: Sorry to
6 inform both Commissioner Rohy and Mr. O'Brien that
7 memories can be dealt with, but the record cannot
8 be.

9 (Laughter.)

10 MS. EDSON: I would just note the
11 statute still requires the Commission to prepare
12 an Electricity Report every two years.

13 COMMISSIONER ROHY: Thank you for that
14 reminder.

15 (Laughter.)

16 PRESIDING MEMBER LAURIE: Additional
17 public input on the question?

18 Thank you. Seeing none, next item,
19 please.

20 MR. O'BRIEN: The next item concerns the
21 air district determination of compliance. Should
22 air districts be required to file a final
23 determination of compliance 180 days after an
24 application for certification is deemed data
25 adequate.

1 This issue was at least partially
2 discussed yesterday, and it's directly related to
3 requiring other agencies to submit their reports
4 to the Commission 180 days after an application is
5 deemed data adequate.

6 PRESIDING MEMBER LAURIE: Public input
7 on the question, please.

8 Thank you. Seeing none, next item,
9 please.

10 MR. O'BRIEN: The next item is multiple
11 facility site. I think we discussed that prior --
12 a few minutes ago, and staff's recommending
13 deleting Sections 1752.7 and 1757 in conjunction
14 with eliminating the NOI. But based upon the
15 comments we've received, we'll go back and re-
16 examine that issue.

17 PRESIDING MEMBER LAURIE: Thank you.
18 Additional public input on the question.
19 Seeing none, next item, please.

20 MR. O'BRIEN: The next item concerns
21 filing fees. The issue is should the Commission
22 charge applicants a filing fee and/or a fee based
23 upon the amount of work needed to process an
24 application for certification, and if fees are
25 charged, should they account for all or only a

1 percentage of the costs incurred by the Commission
2 to process an AFC.

3 PRESIDING MEMBER LAURIE: Is there any
4 public input on the question? And please think
5 broad public interest.

6 MS. EDSON: Happy to. Our policies are
7 always driven by the broad public interest,
8 Commissioner.

9 We had several questions about this.
10 When this issue has arisen in the past it's arisen
11 in the context of possible legislative changes, as
12 opposed to administrative changes. I've been
13 informed that the Commission proposes to do this
14 under the authority provided in CEQA. I would
15 simply suggest that that may require some
16 examination to really understand whether that's
17 possible.

18 Second comment is that the electricity
19 surcharges, what currently funds the Commission, I
20 think theoretically has the -- the argument was
21 that this is what -- this charge on electricity is
22 what would fund the state's activity with regard
23 to power plant siting and other activities of the
24 Commission. Perhaps the level of that surcharge
25 should be revisited in the event that the

1 Commission's revenue becomes in some part, in any
2 way fee based.

3 And thirdly, my comment is that in the
4 event fees are assessed, I mean, fees are assessed
5 on developers all the time. And in many cases, my
6 clients pay fees to the local agencies that are
7 processing the determination of compliance with
8 the air districts, et cetera, in the hundreds of
9 thousands of dollars. So it's not as if there are
10 no fees associated with these projects.

11 The -- it -- in many ways, I think to
12 the extent that we're going to be asked to pay for
13 the state's review of these facilities, it changes
14 the dynamic in terms of our interest in having a
15 more efficient process. I mean, we want an
16 efficient process in any case, but I think
17 arguably the current process is somewhat redundant
18 when compared with local agency permitting, where
19 when an applicant files they come in, and I think
20 -- and Commissioner Laurie, you can correct me if
21 I'm wrong -- but my understanding is in most cases
22 they are -- their fees are used to hire -- either
23 reimburse the local agency for their analysis, or
24 to hire a consultant to prepare a draft
25 environmental impact report.

1 In the case of the Energy Commission,
2 the application for certification I think arguably
3 is very much like a draft environmental impact
4 report that an applicant already comes in with,
5 and has spent a great deal of money to prepare.
6 And then the state prepares another one.

7 So there's a redundancy there that I
8 think we would -- we would want to examine in the
9 event we're going to be reimbursing the state for
10 the cost of processing these applications.

11 PRESIDING MEMBER LAURIE: Karen,
12 question. And this issue was raised somewhat
13 yesterday. If you're not prepared to answer it
14 today, that's fine.

15 But there is the possibility of going to
16 a kind of structure, kind of process used by local
17 government that is you submit an application that
18 describes the project. The governmental entity
19 then reviews it in the form of an EIR, or an
20 equivalent document. So it avoids the redundancy.

21 However, in many cases, at the local
22 government level a developer will have
23 nevertheless done a lot of preliminary work, and
24 submit that. And sometimes the environmental
25 author will accept it, sometimes they will not.

1 And the question of duplication of fees comes up
2 all the time.

3 But the point remains that are you at
4 all interested -- putting the question of fees
5 aside for a moment --

6 MS. EDSON: Sure.

7 PRESIDING MEMBER LAURIE: -- are you at
8 all interested in examining going to an
9 alternative methodology of processing, submitting
10 a project description, submitting an application
11 with basic data, but not the equivalent of an AFC,
12 and just do an EIR approach to the application,
13 similar to what you would have at the local
14 government level.

15 MS. EDSON: Well, I, you know, I
16 certainly don't want to rule that out. IEP had
17 internal deliberation last year in the context of
18 SB 110, about what the scope of their agenda
19 should be in terms of the power plant siting
20 process. And there were a couple of concerns, and
21 I think the tension is a tension between knowing
22 what you have and not knowing what you're going to
23 get.

24 The development community understands
25 this process, they've dealt with this process,

1 it's an extraordinarily expensive process. But
2 having said that, they know what it is and they
3 know how it works. And as I think everyone is
4 aware, there's a -- there is an unprecedented
5 level of development activity going on in light of
6 the current market and changes in the market
7 structure.

8 So having -- that I think is what --
9 part of what creates the resistance. If -- when
10 we're in the middle of this kind of activity, the
11 idea of inserting this new element of uncertainty
12 into the process, I think is a little
13 disconcerting.

14 Having said that, I -- I certainly don't
15 think that the development community wants to rule
16 out an examination of those kinds of alternatives.

17 PRESIDING MEMBER LAURIE: I am not
18 promoting the idea, but it is an alternative for
19 folks to think about.

20 MS. EDSON: Yes.

21 PRESIDING MEMBER LAURIE: Frankly, what
22 often happens with a land use project is you
23 submit your application, and government authority
24 does the EIR that you pay for. But then in order
25 to rebut, you go out and you -- you do do

1 redundancy, except you do it after the fact, not
2 before the fact. And so I think you often find
3 that you take the cost of the EIR and multiply it
4 by two, and there's going to be your consultant's
5 cost, except in that instance it's often in
6 response to the EIR, not to set up the
7 environmental analysis.

8 MS. EDSON: Well, I think what -- what
9 this process is, is it may move forward in time
10 the identification of the -- of the critical
11 issues, because you do have I think more
12 information at the outset.

13 PRESIDING MEMBER LAURIE: And what would
14 you say is the average length of time that you
15 work on a project before AFC is filed? Six months
16 to a year, six months to --

17 MS. EDSON: Well, I think my -- my
18 advice to clients is that they should budget six
19 months simply for the preparation of the AFC. So
20 site identification, number of project, design
21 issues really have to be done in advance of that.

22 COMMISSIONER ROHY: IS it not true that
23 the biological studies are often done a year in
24 advance of --

25 MS. EDSON: In many -- there are a

1 number of environmental issues that require
2 considerable advance modeling and monitoring.
3 You mean spring surveys, you know, you've got to
4 do it in the spring.

5 COMMISSIONER ROHY: Spring surveys. So
6 it could be that an applicant -- is it possible
7 that they would work over a year before the filing
8 of the AFC?

9 MS. EDSON: Oh, certainly.

10 PRESIDING MEMBER LAURIE: Okay. Thank
11 you very much.

12 Additional input on the question.

13 MR. ALVAREZ: Commissioner, again, thank
14 you. Yesterday I raised -- just support that
15 again.

16 Manuel Alvarez, Southern California
17 Edison.

18 I guess yesterday, when I -- when I
19 addressed the Commission, I raised this issue, and
20 I actually supported the Commission's looking into
21 this question and readjusting the incidence of
22 benefits and costs to these particular facilities.
23 I guess I believe that as this industry
24 restructures, this question of costs and benefits
25 and the incidence thereof will reach to broader

1 areas involved with electricity.

2 PRESIDING MEMBER LAURIE: Thank you,
3 sir.

4 COMMISSIONER ROHY: Well, Manuel, excuse
5 me. Mr. Alvarez. Manuel, a fine point, though,
6 but if a power plant applicant were asked to pay
7 for a -- pay a fee, would that be in advance or
8 after the decision?

9 And the question is, if someone were
10 turned down, they may be less inclined to pay the
11 fee.

12 MR. ALVAREZ: Well, I guess, you know,
13 every -- every organization has to figure out how
14 to collect its fees. So I guess I don't have an
15 opinion about that, so I'll leave that for you to
16 ponder of how one collects a debt owed.

17 COMMISSIONER ROHY: Thank you.

18 PRESIDING MEMBER LAURIE: Additional
19 input?

20 Seeing none, thank you. Next item.

21 MR. O'BRIEN: The next two items, 14 and
22 15, 14 being geothermal power plant certification
23 review and determination of commercial steam
24 resources, and 15, delegation of geothermal siting
25 authority to county governments, have already been

1 discussed under the proposed changes to the Warren
2 Alquist Act.

3 So going on to Item Number 16, it's site
4 control, and that issue is should the Commission
5 require an applicant to demonstrate some type of
6 site control prior to certification. One example,
7 could be it could be part of data adequacy, or as
8 a condition of certification, should site control
9 apply to appurtenant facilities, and should site
10 control apply to transmission line projects.

11 PRESIDING MEMBER LAURIE: So we don't
12 even require permission from the landowner?

13 MR. O'BRIEN: No, we don't. You could
14 file an AFC --

15 PRESIDING MEMBER LAURIE: On somebody
16 else's property. Without their permission.

17 COMMISSIONER ROHY: I think there's one
18 planned for your home right now, Commissioner.

19 (Laughter.)

20 PRESIDING MEMBER LAURIE: Hey, it's okay
21 with me, if the price is right.

22 Comments. Ms. Edson.

23 MS. EDSON: Karen Edson, for IEP.

24 We don't object to some mechanism for
25 making sure there is -- site control becomes a

1 question of what level of site control you're
2 requiring. And we'd be -- want to work with the
3 staff on how that's defined.

4 In terms of linear facilities, we think
5 that's a much more difficult thing to try to
6 provide at the outset of a proceeding, and really
7 think that that's the -- given that you're now
8 kind of getting into that area where I think
9 eminent domain powers become much more important
10 and you may in fact -- the utility may be
11 constructing the interconnections and exercising
12 eminent domain to do that. So I think we would --
13 we would argue that this is something that may be
14 appropriate with regard to the power plant site,
15 but not appropriate necessarily with regard to the
16 linear facilities.

17 PRESIDING MEMBER LAURIE: Thank you.

18 MR. O'BRIEN: Can I ask a question.
19 Karen, is there a difference between whatever
20 mechanism that might be, in terms of its timing?
21 For example, there might be a significant
22 difference in your view regarding if it was
23 required for data adequacy, as opposed to required
24 for certification.

25 MS. EDSON: In terms of transmission

1 lines?

2 MR. O'BRIEN: No, I'm talking about
3 power plants now.

4 MS. EDSON: Oh, at the power plants.
5 There probably are timing issues in terms of the
6 degree of control that you're seeking.

7 MR. HARRIS: Jeff Harris.

8 I think it all comes down to, again, of
9 how much site control is site control. Is an
10 option sufficient. Timing here is obviously a big
11 issue, because whether you have site control or
12 not affects the price of the site.

13 I think the best analogy may be the
14 purchase of ERCs. Once you have those under a
15 binding option agreement that's executable, you
16 know, we provide that kind of information because
17 there's no longer a gaming that can go on in
18 commercial terms. So that's the immediate analogy
19 that springs to mind.

20 This may be, in terms of Mr. O'Brien's
21 question about data adequacy or post
22 certification, it may be a better issue, if it's
23 dealt with at all, certainly not a data adequacy.
24 I think that will create problems for power plant
25 developers, and it also will create some

1 confusion, I think.

2 I don't know that this is a big problem
3 out there right now. Most developers are going to
4 have at least an option on a property. I doubt
5 that anyone's going to proceed at their own risk,
6 assuming that can get site control post
7 certification, so I don't think that's a -- that's
8 a big issue.

9 COMMISSIONER ROHY: Excuse me, but we
10 spent a lot of time on one recent case where they
11 had no site control, and staff and the
12 Commissioners spent a tremendous amount of effort,
13 and then the power plant was never built because
14 they couldn't get site control.

15 MR. HARRIS: I'm unaware of that,
16 obviously.

17 I think my -- my bigger concern does tie
18 back to the issue of eminent domain, again. This
19 is much less a problem with the site, I think,
20 generally, and much more an issue for the linear
21 facilities. We talked yesterday about rights-of-
22 way and a developing problem of having -- of post
23 certification landowners seeing a chance to try to
24 hold a project up and say basically you can't get
25 to market without my land, and it's extremely

1 valuable to me.

2 So I think in that context, this same
3 issue comes up on site control. So.

4 PRESIDING MEMBER LAURIE: Thank you.

5 Additional comment.

6 Seeing none, next item.

7 MR. O'BRIEN: The next item is
8 functional -- I'm sorry. The next item is number
9 17, facility closure. Should the regulations
10 require facility owners to file a facility closure
11 plan with the Commission.

12 PRESIDING MEMBER LAURIE: I thought we
13 were currently doing that, Terry.

14 MR. O'BRIEN: Yes, we are. But it's not
15 -- it's not in -- specified in the regulations.

16 PRESIDING MEMBER LAURIE: Okay. Thank
17 you.

18 Comments.

19 MS. EDSON: Karen Edson, IEP.

20 In our mind, the question here is the
21 timing. I think currently the Commission requires
22 these as part of the -- the conditions of
23 compliance, is that the right term, and it's filed
24 post certification.

25 We don't object to that. We think

1 that's appropriate timing. We would strongly
2 object were this filed as part of an application
3 and subject to litigation in the hearing process.

4 PRESIDING MEMBER LAURIE: Thank you.

5 Additional comment? Thank you. Seeing
6 none, next item, please.

7 MR. O'BRIEN: The next item is number
8 18, functional equivalency. Should the Commission
9 continue with its functionally equivalent review
10 process or should it make changes to create a
11 process that more closely mirrors what is done by
12 local agencies. There was some discussion on this
13 item yesterday.

14 PRESIDING MEMBER LAURIE: Thank you.
15 Comment, please.

16 Seeing no input on the question, I call
17 for the next item, please.

18 MR. O'BRIEN: Number 19 is data adequacy
19 regulations. Should revisions be made to the data
20 adequacy regulations. If yes, what changes, and
21 in what technical areas.

22 PRESIDING MEMBER LAURIE: My only
23 comment to this, Terry, and I know we talked about
24 this when we determined to keep it in the matrix.
25 How would you suggest we approach the issue,

1 assuming we said yes, we want to look at data
2 adequacy. Would that be part of the current
3 upcoming OIR, or would that be a separate process,
4 in your mind?

5 MR. O'BRIEN: I think it could be part
6 of the upcoming OIR. There may be -- I would
7 imagine most of the changes that you would make on
8 data adequacy would be simply regulation changes.
9 It would not require any changes to the -- to the
10 statute. So it would be appropriate for the OIR.

11 PRESIDING MEMBER LAURIE: Has there been
12 any discussion about requiring data reflecting
13 compliance with LORS, as part of an AFC?

14 MR. O'BRIEN: Well, in an AFC filing an
15 applicant has to, in each of the various technical
16 areas, discuss LORS and how the project will
17 comply with those. So that is -- that is a
18 requirement right now.

19 PRESIDING MEMBER LAURIE: But is there
20 any consideration in your department of requiring
21 compliance with LORS at the time the application
22 is filed?

23 MR. THERKELSEN: Bob Therkelsen
24 speaking. No, we haven't considered making that a
25 requirement at data adequacy. I think that would

1 -- given the Commission has the ability to
2 override, that would eliminate that option from
3 any applicant.

4 PRESIDING MEMBER LAURIE: Well, we have
5 to somewhere put it on the table, because I know
6 one or more Commissioners -- first of all, we know
7 that this issue of local zoning related problems
8 is -- they're a substantial hurdle for all of us.
9 I know at least one Commissioner, if not more, has
10 indicated a desire to look at requiring the
11 applicant to get it all done. I don't believe
12 that's workable. But I think the issue certainly
13 deserves a discussion. And I think in order to be
14 fair, that discussion should take place sooner
15 rather than later.

16 And so maybe we can address it through
17 this process, or when we open up the OIR.

18 Ms. Edson.

19 MS. EDSON: Karen Edson, for IEP.

20 We think the current showing that
21 applicants are required to make in the application
22 is the appropriate approach, where there is a
23 clear discussion of compliance with LORS. If you
24 -- if you do require conformance as a condition of
25 data adequacy, you may be precluding the

1 development of very essential facilities in the
2 state, and I can't imagine that that's an outcome
3 that the Commission would want.

4 I mean, I'm aware, for example, of power
5 plants where local -- operating power plants today
6 where local agencies have attempted to shut them
7 down. These are plants that are essential for
8 reliable local service. And it's very possible
9 that those facilities will come before the
10 Commission for -- with an application for
11 certification facing a local agency that not only
12 is refusing to change their ordinances, but will
13 actively change ordinances to ensure non-
14 compliance.

15 So in an environment of that sort, I
16 think it's directly contrary to the public
17 interest for the state to impose the Catch-22 kind
18 of obligation.

19 PRESIDING MEMBER LAURIE: And to make
20 things more complicated, I think there are very
21 few industrial type projects that do not require
22 some discretionary local decision making, whether
23 it's a special use permit, a variance, or a
24 rezone.

25 Now, often an industrial use will be

1 consistent with a local agency's general plan, but
2 often local agencies don't rezone until they have
3 a project sitting in front of them. So -- and
4 they would be disinclined to do so, speculating
5 that such may be approved.

6 So it would solve our problem if there
7 was no zoning issue to be faced by us.
8 Practically speaking, I don't know how it would
9 work.

10 MS. EDSON: Will further complicate --
11 excuse me. I was just going to add that further
12 complicating the issue is that that local agency
13 wouldn't do the environmental assessment, nor did
14 it make the change that we're talking about. So
15 you've created a -- I think a kind of a real --
16 you're essentially thwarting the purpose of the
17 Warren Alquist Act and giving this -- this
18 Commission jurisdiction over these facilities.

19 The -- I think the -- as I indicated
20 yesterday, IEP does want to work with the
21 Commission. In fact, I was just talking to Mr.
22 Blees about getting some appointments scheduled
23 soon to start talking about how to try to
24 integrate some of those kind of local issues with
25 the current Commission process in a way that

1 remains in compliance with CEQA. I think that's
2 -- that's the right answer, from my point of view.

3 PRESIDING MEMBER LAURIE: Okay. Thank
4 you.

5 MR. O'BRIEN: Karen, can I ask you one
6 question. One of the reasons that this issue came
7 up is a concern on the part of the Commission that
8 if the Commission does not require sufficient
9 information as a part of data adequacy, it leads
10 to problems in processing the cases, and makes it
11 difficult to meet the mandated 12 month review
12 period.

13 And one -- a couple of areas where we've
14 run into problems in the past has been with air
15 quality and the issue of offsets. Another has
16 been in transmission line in the interconnection
17 studies, et cetera. And some people have put
18 forward ideas in terms of the Commission should
19 have more information up front. For example, in
20 the area of air offsets.

21 And I was wondering if you had any
22 comments on either the air quality area or
23 transmission system evaluation regarding the level
24 of detail that the Commission now requires.

25 MS. EDSON: Well, with regard -- let me

1 start with transmission lines, that -- that I
2 think the Commission has to be very careful about
3 again creating Catch-22 problems, because in many
4 cases the interconnection studies are outside the
5 control of the applicants. They're going to the
6 utilities to apply for these and to fund -- fund
7 the studies. And as I indicated, it's not
8 necessarily in their control to decide when
9 precisely that study will be completed.

10 And I think we would object to something
11 that places -- makes a data adequacy requirement
12 out of something that we can't control the timing
13 of. This has been an issue, I think, over --
14 that's risen a number of times in the last 10 or
15 15 years, and I don't think our position on it has
16 changed.

17 With regard to air quality, I think it
18 kind of takes us back to the option and letter of
19 intent issues. I know in the air board's recent
20 report, their guidelines for local agencies, they
21 talk about the letter of intent and the options
22 approach, and I think the Commission staff has at
23 least been applying some policies in that regard.

24 I guess my comment there is that I think
25 your regulations should reflect your policies.

1 And I think that in examining those definitions, I
2 presume that they will feed through the -- the
3 filing requirements.

4 MR. HARRIS: Jeff Harris.

5 A couple of quick comments. First, I
6 think that the answer is that the AFC already does
7 require us to do a LORS compliance, and whether
8 staff feels like applicants have done a good job
9 of giving them a full disclosure of all those non-
10 compliance issues, that's another matter. But I
11 think that's probably where that ought to be
12 handled.

13 And as Mr. Therkelsen said with the
14 question of the override, if you were to require
15 complete compliance with LORS, then you in effect
16 would be through regulation eliminating that
17 statutory option that you want to preserve,
18 although we never want to go there, obviously.

19 I also would like to make the point that
20 -- echoing what Commissioner Laurie said, is that
21 there are often the discretionary permits that
22 have to be in place, even when the -- the land use
23 designations are correct, the zoning is correct,
24 most frequently you'll find the need for a
25 variance for the stack height.

1 And I think I can talk about the
2 Pittsburg energy facility, which is post -- been
3 certified, so -- as a specific example of that.
4 That project is in a heavy industrial zone that's
5 surrounded by a lot of heavy industrial use.
6 There was still a need to go back for a variance
7 for the stack height.

8 So it's a fairly common problem. You
9 would have LORS non-compliance there, even though
10 you had zoning and general plan, and then -- the
11 designations, not amendments. It's the proper
12 designations to begin with. You still have a
13 slight non-compliance.

14 And then finally, to go to the issue of
15 ERCs. I keep using the word tension, I like it, I
16 guess. But there is a tension there between
17 disclosing as soon as you possibly can the sources
18 of those ERCs, and locking an applicant in to a
19 particular set of ERCs. And let me expand upon
20 that thought.

21 As staff well knows, the Clean Air Act
22 allows for emissions to be taken from the district
23 itself. So we've heard a lot about, for example,
24 is that a South Bay project, and where the
25 emission source is coming from, are they coming

1 from North Bay, vice-versa. One thing that
2 applicants have tried to do, I think, from a
3 public relations standpoint, is to find as many
4 offsets as possible close to the source. Even
5 though that's beyond what the law requires. It's
6 good -- it's good public relations, and it's
7 actually I think a worthwhile goal of a lot of
8 applicants.

9 The sooner the Commission requires an
10 applicant to lock down the specific set of ERCs,
11 setting aside the question of what the statutes
12 require, you eliminate the flexibility for a
13 proactive applicant to go out and try to find more
14 ERCs closer to that community. And again, this is
15 something that's above and beyond what's required
16 by law. But I think it's good PR for -- for
17 applicants, and so I'd ask you to take that into
18 consideration as well.

19 PRESIDING MEMBER LAURIE: Thank you.

20 Additional comment on the question.

21 Seeing none, Mr. O'Brien, do you have
22 any additional remarks?

23 MR. O'BRIEN: Commissioner, that
24 completes the list of items that were contained in
25 the matrices put forward by staff.

1 I would note that at the beginning of
2 the hearing yesterday, you said that we should put
3 down ex parte rules, but there was a significant
4 discussion on that yesterday afternoon.

5 PRESIDING MEMBER LAURIE: Yes.

6 MR. O'BRIEN: And so I'm not sure
7 whether or not that item has been -- has been
8 wrapped up. But staff has nothing else.

9 We do have attached --

10 MR. THERKELSEN: Just a minute. Excuse
11 me, Terry. There were four items that were
12 proposed as additional topics by members of the
13 public. They were the Cal-ISO pricing structure;
14 proprietary nature of prices; confidentiality for
15 intervenors, allowing them to have access to
16 confidential data; and thermal proof of
17 performance. Those were three -- four items that
18 were suggested.

19 My initial reaction is the first two, on
20 Cal-ISO pricing and the proprietary nature of
21 prices is not an Energy Commission issue. It's
22 something that Cal-ISO would need to deal with.

23 In terms of confidentiality on
24 intervention, that's something we haven't given --
25 for intervenors, that's not something we've given

1 any thought to yet, but probably we ought to look
2 at it.

3 In terms of the thermal proof of
4 performance, that's something the Commission has
5 the discretion to require as a condition of
6 certification. I would not think it advisable at
7 this time to put it in regulations, because I
8 don't know that we need that on every case.
9 That's something we need to look more at.

10 So those would be my reactions on those
11 four additional items that were proposed.

12 PRESIDING MEMBER LAURIE: Well, make
13 sure there is-- those are brought forward to the
14 committee for discussion.

15 MR. THERKELSEN: Okay.

16 PRESIDING MEMBER LAURIE: Any closing
17 comments by members of the public?

18 Commissioner Rohy.

19 COMMISSIONER ROHY: Just want to thank
20 everyone for their participation and endurance.
21 It's been a very useful day and a part, here.

22 PRESIDING MEMBER LAURIE: Thank you.

23 The -- if you folks have time to meet in
24 committee for an hour, and we can make up for some
25 lost time.

1 MR. THERKELSEN: I'll need to check my
2 schedule.

3 PRESIDING MEMBER LAURIE: Okay. This
4 meeting is adjourned.

5 Ladies and gentlemen, thank you very
6 much.

7 (Thereupon, the hearing of the
8 Siting Committee was concluded
9 at 10:30 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Hearing, nor in any way interested in the outcome
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 22nd day of December, 1999.

DEBI BAKER

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345